

House Engrossed Senate Bill

State of Arizona  
Senate  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 210

## **SENATE BILL 1328**

AN ACT

AMENDING SECTION 41-621, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 2, SECTION 2; RELATING TO THE DEPARTMENT OF ADMINISTRATION. ' 1

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-621, Arizona Revised Statutes, as amended by  
3 Laws 2003, chapter 2, section 2, is amended to read:

4 41-621. Purchase of insurance; coverage; limitations;  
5 exclusions; definitions

6 A. The department of administration shall obtain insurance against  
7 loss, to the extent it is determined necessary and in the best interests of  
8 the state as provided in subsection F of this section, on the following:

9 1. All state owned buildings, including those of the universities,  
10 excluding buildings of community colleges, whether financed in whole or in  
11 part by state monies or buildings in which the state has an insurable  
12 interest as determined by the department of administration.

13 2. Contents in any buildings owned, leased or rented, in whole or in  
14 part, by or to the state, excluding buildings of community colleges, and  
15 reported to the department of administration.

16 3. The state and its departments, agencies, boards and commissions and  
17 all officers, agents and employees thereof and such others as may be  
18 necessary to accomplish the functions or business of the state and its  
19 departments, agencies, boards and commissions against liability for acts or  
20 omissions of any nature while acting in authorized governmental or  
21 proprietary capacities and in the course and scope of employment or  
22 authorization except as prescribed by this chapter.

23 4. All personal property reported to the department of administration,  
24 including vehicles and aircraft owned by the state and its departments,  
25 agencies, boards and commissions and all non-owned personal property which  
26 is under the clear responsibility of this state because of written leases or  
27 other written agreements.

28 5. The state and its departments, agencies, boards and commissions  
29 against casualty, use and occupancy and liability losses of every nature  
30 except as prescribed by this chapter.

31 6. Workers' compensation and employers' liability insurance.

32 7. Design and construction of buildings, roads, environmental  
33 remediations and other construction projects.

34 8. Other exposures to loss where insurance may be required to protect  
35 this state and its departments, agencies, boards and commissions and all  
36 officers, agents and employees acting in the course and scope of employment  
37 or authorization except as prescribed by this chapter.

38 B. To the extent it is determined necessary and in the best interests  
39 of the state, the department of administration shall obtain insurance or  
40 provide for state self-insurance against property damage caused by clients  
41 and liability coverage resulting from, the direct or incidental care of  
42 clients participating in programs of the state and its departments, agencies,  
43 boards or commissions relating to custodial care. The insurable programs  
44 shall include foster care, programs for the developmentally disabled, an  
45 independent living program pursuant to section 8-521 and respite-sitter

1 service programs. The department shall obtain insurance or provide for state  
2 self-insurance pursuant to this subsection to protect the clients  
3 participating in these programs and individual providers of these program  
4 services on behalf of the state and its departments, agencies, boards or  
5 commissions. The insurance provided under this subsection does not include  
6 medical or workers' compensation coverage for providers. The department may  
7 include in its annual budget request pursuant to section 41-622, subsection  
8 D a charge for the insurance or self-insurance provided in this subsection.  
9 To assist in carrying out the provisions of this subsection, the department  
10 shall establish a seven member advisory board in accordance with the  
11 following provisions:

12 1. The board shall consist of three members appointed by the director  
13 of the department of administration, at least one of whom shall be a foster  
14 parent, two members appointed by the director of the department of economic  
15 security, one member appointed by the director of the state department of  
16 corrections, and one member appointed by the administrative director of the  
17 courts.

18 2. The board shall elect a chairman from among its members.

19 3. The board shall hold at least two meetings a year or shall meet at  
20 the call of the chairman.

21 4. Board members shall serve for three year terms.

22 5. Board members are not eligible to receive compensation but are  
23 eligible for reimbursement of expenses pursuant to title 38, chapter 4,  
24 article 2.

25 6. The board shall provide advice to the department regarding coverage  
26 and administration of the provisions of this subsection and shall assist the  
27 department in coordinating its activities pursuant to this subsection with  
28 state departments, agencies, boards and commissions.

29 C. The department of administration may obtain insurance against loss,  
30 to the extent it is determined necessary and in the best interests of the  
31 state as provided in subsection F of this section for the professional  
32 liability of individual physicians and psychiatrists who provide services  
33 under a contract with the state department of corrections. Coverage is  
34 limited to acts and omissions committed inside a state department of  
35 corrections facility while in the performance of the contract and to  
36 individual physicians and psychiatrists who demonstrate to the satisfaction  
37 of the state department of corrections that they cannot otherwise obtain  
38 professional liability coverage for the services required by the contract.  
39 The director of the department of administration may impose on the state  
40 department of corrections a deductible of not more than ten thousand dollars  
41 per loss that arises out of a professional liability claim pursuant to this  
42 subsection. Deductible amounts established by the director shall be subject  
43 to annual review by the joint legislative budget committee.

1       D. The department of administration may obtain property, liability,  
2 disability or workers' compensation insurance, self-insure or develop risk  
3 retention pools to provide for payment of property loss or casualty claims  
4 or disability insurance claims against contractors of this state with the  
5 approval of the joint legislative budget committee. With respect to  
6 insurance, self-insurance or risk retention pools for contractors licensed  
7 and contracted to do work for this state, the coverage afforded applies with  
8 respect to the conduct of the business entity of that contractor. The pool  
9 is available to all contractors regardless of the amount that the state  
10 contracted work bears in relation to the amount of nonstate contracted work.  
11 The contractor shall be terminated from the pool if the contractor ceases to  
12 be a state contractor.

13       E. The department of administration may determine, in the best  
14 interests of the state, that state self-insurance is necessary or desirable  
15 and, if that decision is made, shall provide for state self-insurance for  
16 losses arising out of state property, liability or workers' compensation  
17 claims prescribed by subsection A of this section. If the department of  
18 administration provides state self-insurance, such coverage shall be excess  
19 over any other valid and collectible insurance. The director of the  
20 department of administration may impose on state departments, agencies,  
21 boards and commissions a deductible of not more than ten thousand dollars per  
22 loss that arises out of a property, liability or workers' compensation loss  
23 pursuant to this subsection. Deductible amounts established by the director  
24 shall be subject to annual review by the joint legislative budget committee.

25       F. In carrying out the provisions of this chapter, the department of  
26 administration shall establish and provide the state with some or all of the  
27 necessary risk management services, or shall contract for risk management  
28 services pursuant to chapter 23 of this title, as the director of the  
29 department of administration deems necessary in the best interest of the  
30 state, and may, in addition to other specifications of such coverage as  
31 deemed necessary, determine self-insurance to be established. The provisions  
32 of chapter 23 of this title shall not apply to the department of  
33 administration's procurement of insurance to cover losses arising out of  
34 state property or liability claims prescribed in subsections A and D of this  
35 section or excess loss insurance for the state's workers' compensation  
36 liability for individual or aggregate claims, or both, in such amounts and  
37 at such primary retention levels as the department of administration deems  
38 in the best interest of the state. In purchasing insurance to cover losses  
39 arising out of state property or liability claims prescribed by subsection  
40 A of this section, the department of administration is not subject to the  
41 provisions of title 20, chapter 2, article 5.

42       G. No successful bidder for risk management services pursuant to this  
43 section shall be entitled to receive directly or indirectly any sales  
44 commission, contingent commission, excess profit commission, or other  
45 commissions, or anything of value, as payment for the risk management

1 services except those amounts received directly from this state as payment  
2 for the risk management services.

3 H. The department of administration shall pay for purchased risk  
4 management services, premiums for insurance on state property and state  
5 liability and workers' compensation pursuant to the provisions of this  
6 chapter.

7 I. A state officer, agent or employee acting in good faith, without  
8 wanton disregard of his statutory duties and under the authority of an  
9 enactment that is subsequently declared to be unconstitutional, invalid or  
10 inapplicable is not personally liable for an injury or damage caused thereby  
11 except to the extent that he would have been personally liable had the  
12 enactment been constitutional, valid and applicable.

13 J. A state officer, agent or employee, except as otherwise provided  
14 by statute, is not personally liable for an injury or damage resulting from  
15 his act or omission in a public official capacity where the act or omission  
16 was the result of the exercise of the discretion vested in him if the  
17 exercise of the discretion was done in good faith without wanton disregard  
18 of his statutory duties.

19 K. The state and its departments, agencies, boards and commissions are  
20 immune from liability for losses arising out of a judgment for willful and  
21 wanton conduct resulting in punitive or exemplary damages.

22 L. The following exclusions shall apply to subsections A, B and E of  
23 this section:

24 1. Losses against this state and its departments, agencies, boards and  
25 commissions that arise out of and are directly attributable to an act or  
26 omission determined by a court to be a felony by a person who is provided  
27 coverage pursuant to this article unless the state knew of the person's  
28 propensity for that action, except those acts arising out of the operation  
29 or use of a motor vehicle.

30 2. Losses arising out of contractual breaches.

31 M. If self-insurance coverage is determined to exist, the attorney  
32 general, with funds provided by the department of administration, shall  
33 provide for the defense, either through his office or by appointment of  
34 outside legal counsel, of the state and its departments, agencies, boards and  
35 commissions and all officers, agents and employees thereof and such others  
36 as are insured by the department of administration for or on account of their  
37 acts or omissions covered pursuant to this chapter. All state departments,  
38 agencies, boards and commissions, all officers, agents and employees thereof  
39 and such others as are insured by the department of administration shall  
40 cooperate fully with the attorney general and department of administration  
41 in the defense of claims arising pursuant to this chapter.

42 N. A claim for liability damages made pursuant to this chapter may be  
43 settled and payment made up to the amount of twenty-five thousand dollars or  
44 such higher limit as may be established by the joint legislative budget  
45 committee with the approval of the director of the department of

administration. A claim over the amount of twenty-five thousand dollars up to fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration and the attorney general. Any claim over the amount of fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

O. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.

2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

P. The department of administration shall pay, on behalf of any state officer, agent or employee, any damages, excluding punitive damages, for which the officer, agent or employee becomes legally responsible if the acts or omissions resulting in liability were within the officer's, agent's or employee's course and scope of employment. The department of administration may pay for all damages however designated which the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

Q. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit the provisions of this chapter.

R. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1           1. The acts or omissions that the state officer, agent or employee is  
2 employed or authorized to perform.

3           2. The acts or omissions of the state officer, agent or employee occur  
4 substantially within the authorized time and space limit.

5           3. The acts or omissions are activated at least in part by a purpose  
6 to serve this state or its departments, agencies, boards or commissions.

7           S. To the extent it is determined necessary and in the best interest  
8 of this state, the department of administration may obtain design and  
9 construction insurance or provide for self-insurance against property damage  
10 caused by this state, its departments, agencies, boards and commissions and  
11 all officers and employees of this state in connection with the construction  
12 of public works projects. Workers' compensation liability insurance may be  
13 purchased to cover both general contractors and subcontractors doing work on  
14 a specific contracted work site. The department may include in its annual  
15 budget request, pursuant to section 41-622, subsection D, the cost of the  
16 insurance purchased or provided. In connection with the construction of  
17 public works projects, the department of administration may also use an  
18 owner-controlled or wrap-up insurance program if all of the following  
19 conditions are met:

20           1. The total cost of the project is over fifty million dollars.

21           2. The program maintains completed operations coverage for a term  
22 during which coverage is reasonably commercially available as determined by  
23 the director of the department of insurance, but in no event for less than  
24 three years.

25           3. Bid specifications clearly specify for all bidders the insurance  
26 coverage provided under the program and the minimum safety requirements that  
27 shall be met.

28           4. The program does not prohibit a contractor or subcontractor from  
29 purchasing any additional insurance coverage that a contractor believes is  
30 necessary for protection from any liability arising out of the contract. The  
31 cost of the additional insurance shall not be passed through to this state  
32 on a contract bid.

33           5. The program does not include surety insurance.

34           T. The state may purchase an owner-controlled or wrap-up policy that  
35 has a deductible or self-insured retention as long as the deductible or  
36 self-insured retention does not exceed one million dollars.

37           U. For the purposes of subsections S and T of this section:

38           1. "Owner-controlled or wrap-up insurance" means a series of insurance  
39 policies issued to cover this state and all of the contractors,  
40 subcontractors, architects and engineers on a specified contracted work site  
41 for purposes of general liability, property damage and workers' compensation.

42           2. "Specific contracted work site" means construction being performed  
43 at one site or a series of contiguous sites separated only by a street,  
44 roadway, waterway or railroad right-of-way, or along a continuous system for  
45 the provision of water and power.

- 1 V. NOTWITHSTANDING ANY OTHER STATUTE THE DEPARTMENT OF ADMINISTRATION  
2 MAY:  
3 1. LIMIT THE LIABILITY OF A PERSON WHO CONTRACTS TO PROVIDE GOODS,  
4 SOFTWARE OR OTHER SERVICES TO THIS STATE.  
5 2. ALLOW THE PERSON TO DISCLAIM INCIDENTAL OR CONSEQUENTIAL DAMAGES.  
6 3. INDEMNIFY OR HOLD HARMLESS ANY PARTY TO THE CONTRACT.

APPROVED BY THE GOVERNOR MAY 12, 2003.

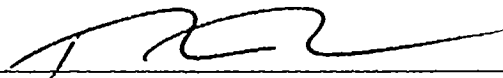
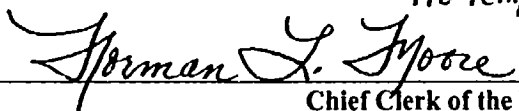
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2003.



Passed the House April 14, 2003,

by the following vote: 31 Ayes,


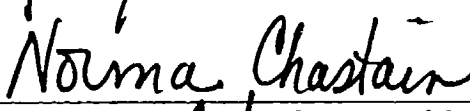
29 Nays, 0 Not Voting

  
\_\_\_\_\_  
Speaker of the House  
Pro Tempore  
  
\_\_\_\_\_  
Chief Clerk of the House

Passed the Senate March 4, 2003,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

  
\_\_\_\_\_  
President of the Senate  
  
\_\_\_\_\_  
Asst. Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

S.B. 1328

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate May 6, 2003

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Blumett  
President of the Senate  
Charmine Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2003

at 3:11 o'clock P M.

Sandra Ramirez  
Secretary to the Governor

Approved this 12 day of

May, 2003,

at 9<sup>10</sup> o'clock A. M.

Jan Noyes  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13 day of May, 2003,

at 11:03 o'clock P M.

Janice K. Brewer  
Secretary of State

S.B. 1328